IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 5125 of 2007()

CRIME NO.128/07 OF THE KASABA POLICE STATION, KOZHIKODE.

PETITIONER : ACCUSED NO.10

DHARMARAJAN @ BABU,
S/O. NARAYANAN CHETTIYAR
AGED 36 YEARS, AMMATH HOUSE,
KOMMERI P.O.,KOZHIKODE.
THE STATE OF KERALA THROUGH THE

BY ADV. SRI.K.ANTONY JOSEPH

RESPONDENTS:

SUB INSPECTOR OF POLICE,
KASABA POLICE STATION,KOZHIKODE,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5125 OF 2007

Dated this the 23rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 9th accused (not the 10th accused as shown in this Bail Application). He faces allegations for offences punishable, inter alia, under Sec.376 of the IPC. The crux of the allegations is that a woman, aged about 32 years – a home nurse by profession, was allegedly kidnapped and raped. A crime was registered on the basis of the statement given by her to the police. Such statement is produced as Annexure-A1. The crux of the allegations is that several persons had sexual intercourse with the victim making payments also. According to her, such intercourses were not with her consent; but were without her consent and against her will. Investigation is in progress. Some of the co-accused have been arrested. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. A reading of Annexure-A1 complaint must reveal to the court that the allegations are totally untrustworthy and are made with oblique motives. At any rate, a careful consideration of the allegations in Annexure-A1 must convey that the alleged sexual intercourses if at all were with the consent of the alleged victim – an adult woman. The petitioner is willing to co-operate with the Investigators. At any rate, the petitioner does not deserve to endure the trauma of arrest and detention, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are indications to suggest that voluntary consent was not there at all and the consent if at all was obtained fraudulently and under intoxication. At this early stage of the investigation, I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I have been taken through Annexure-A1 carefully. I am of opinion that this is a fit case where anticipatory bail can be granted to the petitioner. Appropriate conditions can, of course, be imposed on the petitioner in the interests of a fair, efficient and expeditious

investigation.

4. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 31/8/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 5 p.m. on 31/8/07 and 1/9/07. During this period the Investigator shall be at liberty to interrogate the petitioner in custody and to get the potency test conducted. Thereafter, he shall appear before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as

if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 30/8/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 30/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge